and asked for an injunction to restrain the defendants from selling the land to anyone else. I granted them the injunction they sought. I say no more than that certain critical information, adverse to the plaintiffs, was not before me when I made the ex parte order, but I hasten to add that I do not suggest for a moment that the information was deliberately withheld.

Now, when the plaintiffs came before me for continuation of the injunction, inter partes, I declined to continue it after full argument, with all the relevant facts before me. I was then called upon to decide whether a lis pendens registered against the land by the plaintiffs ought to be discharged. To have allowed the lis to remain registered against the property would have defeated the order I made declining to continue the ex parte injunction. I have now heard further argument and I can see no reason for altering my decision to discharge the lis pendens.

In my judgment, the arguments against the continuation of the interim injunction, which arguments I upheld, apply equally to the issue as to whether the lis pendens should stay. I hold that there is sufficient reason, for the purposes of the old Rules of the Supreme Court O 47 r 23(1), for the lis pendens to be discharged and I so order in my discretion in equity. I should add that I do not consider that I am precluded from making that order by reason of the fact that I have declined to strike out the plaintiffs' action on the grounds that it is frivolous and vexatious and/or an abuse of process.

Insofar as the application to stay the order for the discharge of the lis pendens is concerned, I am obliged to decline a stay because to stay the order would be to render largely nugatory the orders by which I refused to continue the injunction and discharged the lis pendens. The order for costs previously made stands and I make no order with reference to the costs of today.

There will be leave to appeal.

Order accordingly.

Solicitors: *Chow Peng & Partners; Mallal & Namazie.*

Reported by *Terence Tan Bian Chye*

Ruby Investment (Pte) Ltd v Candipark Pte Ltd

HIGH COURT (SINGAPORE) - DISTRICT COURT APPEAL NO 84 OF 1987
COOMARASWAMY J
8 AUGUST 1989

Civil Procedure - Judgment on admissions - Whether order final - Meaning of 'final' - Whether decision of judge on application interlocutory or final order - Whether leave needed to appeal from decision of judge - Res judicata - Decision of present court not to constitute such at hearing of action - Subordinate Court Rules 1986, O 27 r 3, O 55 rr 1(1), (5) & 2 - Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 21 - Subordinate Courts Act (Cap 321, 1985 Ed), ss 42 & 47

Evidence - Informal admissions, effect of - Judgment on admissions - Result inconsistent with issues to be determined at trial

Words and Phrases - 'Final' - Subordinate Courts Rules 1986, O 55 r 1(5)

The appellants agreed, in a written contract ('the contract'), to lease to the respondents a unit in a building ('the unit'). The respondents alleged that the appellants had made an oral promise that the appellants would give vacant possession of the unit to the respondents by the end of March 1982. The appellants denied that such a promise had been made. Following the appellants' failure to give vacant possession according to the oral promise, the respondents rescinded the contract for this failure. The respondents commenced an action in DC(T) 13257 of 1987 against the appellants to claim that they had validly rescinded the contract, that they were entitled to a refund of the deposit they had paid to the appellants under the contract and that they were entitled to damages. While awaiting trial, the respondents filed an application for judgment on admissions pursuant to O 27 r 3 of the Subordinate Courts Rules 1986 ('the application'). It was said that these admissions were contained in the accounting records of the appellants and in the letters from the auditors of the appellants to the respondents. The deputy registrar who heard the application gave judgment in favour of the respondents and on appeal, the district judge also decided in favour of the respondents. The appellants filed a notice of appeal although they had not been given leave to appeal by the district judge, who had awarded $300 costs to the respondents in the appellants' attempt to obtain the leave. The respondents argued that to allow the hearing of the appeal without leave would fail to give effect to O 55 r 1(5) and r 2 of the Subordinate Court Rules 1986, would fail to give effect to the district judge's refusal to give leave to appeal and would open the floodgates for appeals against the decisions made in the subordinate court in interlocutory applications. The appellants argued that the district judge had misconstrued the word 'final' in O 55 r 1(5), that a judgment on admissions under O 27 r 3 is a final judgment/order which gives rise to a right of appeal without leave of the judge who made the order and that s 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) gives the right of appeal from any decision of the district court or magistrate court.

Held, allowing the appeal:

(1) The authorities showed that the word 'final' in O 55 r 1(5) merely means a conclusive determination of the principal matter in question and establishes the right of the plaintiff or the liability of the defendant on the merits of the case as opposed to an interlocutory order.

(2) The court was thus of the view that it does not mean there is no right of appeal from the decision of the district judge.

(3) It was clear that pursuant to s 21 of the Supreme Court of Judicature Act, there is a substantive right of appeal to the High Court from any decision of the district court or magistrate's court, and the Subordinate Courts Rules merely prescribe the procedure of the appeals and cannot take away the right of appeal given by the former Act.

(4) If the decision of the district judge pursuant to O 55 r 1(5) is final, then giving the rule its literal reading, an appeal should arise therefrom as of right without the requirement for leave to appeal.

(5) There are two tests to be applied as to whether an order is an interlocutory or a final order. The first test enunciated in *Bozson* v *Altrincham Urban District Council*[3] ('the *Bozson* test') and the second test *Salaman* v *Warner & Ors*[4] ('the *Salaman* test').

(6) In the first test, one looks at the order or judgment made and asks oneself whether the judgment or order made finally disposes of the rights of the parties. In the second test, one looks at the application and if the decision thereon, whichever way it is given, finally disposes of the matter in dispute, then it is a final order. But if the decision when given one way, will finally dispose of the matter, but if given the other way, will allow the action to go on, then it is not a final but an interlocutory order.

(7) Although the English cases adopted the *Salaman* test, the Privy Council and the Federal Court sitting in Singapore had adopted the *Bozson* test in two cases. The court could not differ from the decision in these two cases and had been persuaded by counsel for the appellants that the *Bozson* test was the test applicable in Singapore.

(8) By the application of this test to the facts, the judgment by the district judge was a final order and an appeal must necessarily lie without the need for leave to appeal. Accordingly, the High Court had the jurisdiction to hear the case.

(9) On a consideration of the merits of the appeal, the court found that the alleged admissions were informal admissions as opposed to formal admissions in pleadings. Hence the appellants are able subsequently to seek to explain away or contradict these admissions and the court is to consider the evidentiary weight to be given to these admissions.

(10) The admission pertaining to the deposit paid to the appellants is one which is inextricably intertwined with the issues at trial, ie whether the appellants are entitled to forfeit the deposit which in turn will revolve around a finding of fact by the trial judge as to whether the appellants had made their alleged oral promise.

(11) If judgment on admissions is given, then it follows that the basis of the trial of this issue will be extinguished. Further, it would be anomalous if the respondents should be given judgment on the admissions purportedly expressed or implied from the confirmation letters if the trial judge subsequently, as a finding of fact, holds that no oral promises had been made by the appellants and that the appellants were therefore entitled to forfeit the deposit. The court was thus of the view that an application under O 27 r 3 should not have been made by the respondents.

(12) The appeal was therefore allowed but this was not to constitute res judicata, and the liability of the parties was to be determined afresh at the hearing of the action, and the district judge hearing the matter was not to have any regard to what had transpired at the O 27 r 3 application. The order for costs of the application for leave to appeal is to stand. The order for costs on the O 27 application and the appeal therefrom is to be reserved to the trial judge hearing the action. The respondents are to deposit with their solicitors the sum of $15,375.40 and to abide by the result of this action. No order was made as to cost of this appeal.

Cases referred to

1 *Marchioness of Huntley* v *Gaskell* [1905] 2 Ch 656 (folld)
2 *Colt Industries Inc* v *Sarlie (No 2)* [1966] 3 All ER 85 (folld)
3 *Bozson* v *Altrincham Urban District Council* [1903] 1 KB 547 (folld)
4 *Salaman* v *Warner & Ors* [1891] 1 QB 734 (not folld)
5 *White* v *Brunton* [1984] QB 570 (not folld)
6 *Tee Than Song Construction Co Ltd* v *Kwong Kum Sun Glass Merchant* [1967] 2 MLJ 205 (folld)
7 *Haron bin Mohd Zaid* v *Central Securities (Holdings) Bhd* [1982] 2 MLJ 94 (folld)

Legislation referred to

Subordinate Courts Act (Cap 321, 1985 Ed) ss 42, 47
Subordinate Courts Rules 1986 O 27 r 3, O 55 rr 1(1), (5), 2
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21

Johnny Cheo for the appellants/defendants.
Choi Yuk Hung (Miss) and *Kelvin Chia* for the respondents/plaintiffs.

Cur Adv Vult

Coomaraswamy J: This appeal is against the decision of the learned district judge dismissing the appeal of the appellants from the decision of the deputy registrar dated 10 September 1987 giving judgment on admission for the sum of $15,375.40 on an application made pursuant to O 27 r 3 of the Subordinate Courts Rules 1986.

The facts of this case arise from events at and subsequent to:

(a) A meeting in March 1982 between a representative of the respondents and a representative of the appellants. At this meeting, it was agreed that the respondents will take and the appellants will grant a lease of a unit #02-06 in Ruby Industrial Complex ('the demised premises'). The respondents further alleged, inter alia, that it was orally agreed that the appellants would give vacant possession of the demised premises to the respondents by the end of March 1982.
(b) Pursuant to this oral agreement, the respondents signed an application form and on 27 March 1982 paid a sum of $7,687.70 to the appellants as a 'booking fee'.
(c) The respondents subsequently signed an agreement for lease on 14 April 1982 with the appellants and paid a further sum of $7,687.70, making a total of $15,375.40 ('the deposit'). It is alleged by the respondents that the appellants were unable to deliver vacant possession of the demised premises to the respondents and the date of delivery of vacant possession of the demised premises was extended on numerous occasions to the end of April 1982, end of May 1982 and early

June 1982. By a letter of 7 June 1982, the respondents purportedly rescinded the agreement for a lease in view of the appellants' alleged inability to deliver vacant possession of the demised premises.

The appellants, on the other hand, contended that there was no oral agreement with regard to a specific date for the delivery of vacant possession of the demised premises. Alternatively, the appellants contended that it can be reasonably implied that vacant possession of the demised premises can only be given to the respondents upon the issuance of a temporary occupation licence ('TOL'). The TOL was issued on 14 June 1982 but the respondents refused to take possession of the demised premises despite the notice to do so by the appellants.

The respondents thereafter commenced an action in DC(T) 13257 of 1986 on 9 July 1982 against the appellants to claim that they have validly rescinded the agreement to lease, that the deposit be returned to them and damages to be paid by the appellants to the respondents.

The appellants in their defence denied any agreement to deliver vacant possession by a specific date and treated the respondents' purported rescission as wrongful and amounted to a repudiation of the agreement. Accordingly, the appellants have counterclaimed against the respondents for a declaration that the agreement has been repudiated by the respondents and that the appellants are entitled to forfeit the deposit.

While awaiting trial, the respondents on 7 July 1987 filed an application for judgment on admissions, pursuant to O 27 r 3 of the Subordinate Courts Rules 1986 ('the application'). The admissions are allegedly contained in or implied from:

(a) the accounting records of the appellants for the year ending 31 December 1982 and the year ending 31 December 1983;
(b) letters from the auditors of the appellants to the respondents dated 28 May 1981, 27 August 1984 and 4 September 1984.

The deputy registrar in the subordinate courts gave judgment in favour of the respondents on the application with costs of the action to be taxed. The appellants appealed against this decision and the appeal was heard by a learned district judge, who on 6 November 1987 and on 9 November 1987 gave his order dismissing the appeal and with costs of $300 to the respondents.

On 12 November 1987, the appellants filed a notice of appeal to the High Court but was requested by the officials at the registry of the subordinate courts to file an application requesting leave to appeal to the High Court. The appellants filed an application on 17 November 1987 requesting leave to appeal to the High Court and the application was heard on 21 November 1987 by the learned district judge. After hearing the application by the appellants on 21 November 1987, the district judge declined to grant the appellants leave to appeal and costs of $300 was awarded to the respondents.

Nevertheless, the appellants filed their appeal on 23 November 1987 and requested that any objection to the appeal be heard by a judge in the High Court.

From the aforesaid it is clear that there are two issues pertaining to this appeal:

(1) the appellants' right to appeal and the jurisdiction of the High Court to hear this appeal; and
(2) if the appellants are successful in (a) above, the merits of the appeal.

(1) *The appellants' right to appeal*

The learned district judge was of the view that pursuant to O 55 r 1 of the Subordinate Courts Rules 1986, there is no right of appeal against his decision of 9 November 1987. Order 55 r 1(5) states:

> The decision of the Judge in chambers under this Rule shall be final.

Counsel for the respondents took the preliminary objection to the hearing of this appeal on the basis that the appellants have already exhausted their last recourse which is an appeal to the learned district judge in chambers pursuant to O 55 r 1 and that there must be finality to a decision on an interlocutory matter. In addition, the appellants have made an application for leave to appeal and this application was refused by the learned district judge. Accordingly, the respondents' counsel contended that if the hearing of the appeal is allowed to be heard, then:

(a) this fails to give effect to the clear provision of O 55 r 1(5) and r 2;
(b) this fails to give effect to the learned district judge's decision refusing leave to appeal; and
(c) open the floodgate for appeals against decisions made in the subordinate courts in interlocutory applications.

On the other hand, the appellants' counsel contended that:

(a) the learned district judge had misconstrued the effect of the word 'final' appearing in O 55 r 1(5);
(b) a judgment on admissions under O 27 r 3 is a final judgment/order and which gives rise to a right of appeal without leave of the judge who made the order; and
(c) section 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) gives a right of appeal from any decision of the district court or magistrate court.

The appellants' counsel contended that the district judge had misconstrued the application of O 55 r 1(5) in that the

word 'final' there does not necessarily exclude the right of an aggrieved litigant from appealing against the decision of the judge in chambers.

Relying on 26 *Halsbury's Laws of England* (4th Ed) para 505 and the cases of *Marchioness of Huntley* v *Gaskell*[1] and *Colt Industries Inc* v *Sarlie (No 2)*,[2] the word 'final' merely means a conclusive determination of the principal matter in question and establishes the right of the plaintiff or the liability of the defendant on the merits of the case as opposed to an interlocutory order.

Accordingly, I am of the view that it does not mean that there is no right of appeal from the decision of the learned district judge.

In support of this construction of O 55 r 1(5), I was referred to s 42 of the Subordinate Courts Act (Cap 321, 1985 Ed) which states:

> Every judgment and order of a District Court exercising civil jurisdiction shall, except as provided by this Act, or any other written law or Rules of Court, *be final and conclusive* between the parties. (Emphasis is mine)

Hence, unless otherwise stated, 'final' means final and conclusive, rather than excluding the right of appeal. Furthermore, s 47 of the Subordinate Courts Act states:

> Subject to the provision of the Supreme Court of Judicature Act relating to civil appeals from the Subordinate Courts to the High Court, the Rules of Court shall regulate and prescribe the procedure on appeals from a District Court exercising civil jurisdiction to the High Court.

Section 21(1) of the Supreme Court of Judicature Act states:

> Subject to the provision of this or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject matter exceeds $2,000 or with leave of the High Court if under that amount.

It is clear that pursuant to s 21 of the Supreme Court of Judicature Act, there is a substantive right of appeal to the High Court from '*any decision*' (emphasis is mine) of the district court or magistrate court conferred by the Supreme Court of Judicature Act, and the Subordinate Courts Rules 1986 merely prescribe the procedure of the appeals and cannot take away the right of appeal given by the Supreme Court of Judicature Act.

It was also the submission of the appellants' counsel that judgment on admissions granted pursuant to O 27 r 3 of the Subordinate Courts Rules 1986 is a final judgment/order and that an appeal can arise therefrom without the need for leave for such an appeal.

If the decision of the district judge pursuant to O 55 r 1(5) is final, then giving the rule its literal reading, an appeal should arise therefrom as of right without the requirement for leave to appeal.

There are two tests to be applied as to whether an order is an interlocutory or a final order. The first test being the test enunciated in *Bozson* v *Altrincham Urban District Council*[3] ('the *Bozson* test') and the second test being the test enunciated in *Salaman* v *Warner & Ors*[4] ('the *Salaman* test').

The distinction between the two tests is that in the *Bozson* test, one looks at the order or judgment made and asks oneself whether the judgment or order made finally disposed of the rights of the parties.

In the *Salaman* test, one looks at the application and if a decision thereon, whichever way it is given, finally disposes of the matter in dispute, then it is a final order. But if the decision is given one way, it will finally dispose of the matter in dispute, but if given in the other way, it will allow the action to go on, then it is not a final but an interlocutory order.

Whilst the English courts have consistently adopted the *Salaman* test (see *White* v *Brunton*[5]), there are two relevant local decisions wherein the courts have adopted the *Bozson* test.

The first decision is that of the Federal Court sitting in Singapore in *Tee Than Song Construction Co Ltd* v *Kwong Kum Sun Glass Merchant*[6] and the subsequent decision of the Privy Council in *Haron bin Mohd Zaid* v *Central Securities (Holdings) Bhd.*[7] In these cases, the Federal Court and the Privy Council have respectively decided to adopt the *Bozson* test as the applicable test. I cannot differ from the decisions in the aforesaid two cases and I am persuaded by counsel for the appellants to adopt the *Bozson* test as the test applicable in the Singapore court.

Clearly by application of this test to the present facts, the judgment on admission for the sum of $15,375.40 made pursuant to O 27 r 3 is a final order and an appeal must necessarily lie therefrom without the need for leave to appeal.

Accordingly for the aforesaid reasons, I am of the view that the appellants do have a right of appeal and the High Court has jurisdiction to hear this appeal.

(2) *Merits of the appeal*

Having decided the preliminary issue in favour of the appellants, I will now look into the merits of the appeal, proper. I note that the admission is alleged to be expressed in or implied from the confirmation letters of 28 May 1982, 27 August 1984 and 4 September 1984 from the appellants' auditors to the respondents. These are informal admissions as opposed to formal admissions in pleadings. Hence, the appellants are able subsequently to seek to explain away or contradict these 'admissions' and the court is to consider the evidentiary weight to be given to these 'admissions'.

Before deciding on the question of whether the confirmation letters constitute an admission by the appellants and the weight to be given to such admission, I am perturbed by the fact that the admission pertaining to the deposit is one which is inextricably intertwined with the issues at the trial, ie whether the appellants are entitled to forfeit the deposit which in turn will resolve around a finding of fact by the trial judge as to whether the oral representations as alleged by the respondents were in fact made by the appellants. If judgment on admissions is given, then it follows that the basis of the trial of this issue will be extinguished. Furthermore, it would be an anomalous situation if the respondents should be given judgment on the admissions purportedly expressed or implied from the confirmation letters if the trial judge subsequently, as a finding of act, holds that no oral representations were made by the appellants and that the respondents' purported rescission was wrongful and amounted to a repudiation of the agreement to lease and flowing therefrom the appellants were entitled to forfeit the deposit.

Accordingly, I am of the view that an application under O 27 r 3 should not have been taken out by the respondents under such circumstances, and I will allow this appeal and make the following orders, namely:

(a) the appeal is allowed but the allowing of the appeal does not constitute res judicata; and the liability or otherwise of the appellants/defendants to the respondents/plaintiffs for the sum of $15,375.40 be determined afresh at the hearing of the action and the district judge hearing the trial is not to have any regard to what had previously transpired on the O 27 r 3 application and the proceedings consequent to that;
(b) order for costs of application for leave to appeal to stand;
(c) order for costs on the O 27 application and the appeal therefrom be reserved to the trial judge hearing the action;
(d) the respondents/plaintiffs to deposit with their solicitors the sum of $15,375.40 and to abide by the result of the action; and
(e) no order as to costs of this appeal.

Order accordingly.

Solicitors: *Shook Lin & Bok; Chor Pee & Co.*

Reported by *Terence Tan Bian Chye*

Cold Storage Singapore (1983) Pte Ltd v Management Corporation of Chancery Court & Ors

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS NO 348 OF 1989
CHAN SEK KEONG J
5 AUGUST 1989

Landlord and Tenant - Lease of premises for business - Imposition of parking scheme by assignee of landlord - Scheme affecting business of tenant - Whether derogation from grant

Land Law - Management corporation - Duty to manage housing estate - Whether parking scheme within its powers - Special resolution defeated - Insufficient notice for resolution - Whether resolution took effect as ordinary resolution - HUDC Housing Estates Act (Cap 131, 1985 Ed), ss 2, 13(1) & 45

Chancery Court ('the estate') is a housing estate which has a number of shopping units within it. The estate was originally developed by the Housing and Urban Development Corporation ('HUDC'). The plaintiffs are a monthly tenant of the Housing Development Board ('HDB'). Under the terms of the tenancy, the plaintiffs agreed to use the premises rented ('the premises') as a supermarket and for no other purpose. The HUDC Act ('the Act') was enacted to establish bodies corporate comprising owners of flats on HUDC estates to take over the management and maintenance of these estates from the HUDC. For this purpose, the first defendant was constituted to manage the estate. The second to the thirteenth defendants are the current members of the management committee of the first defendant. On 19 April 1987, the first defendant held an extraordinary general meeting at which the members passed a resolution to introduce a pay parking scheme within the estate. The scheme sought to regulate vehicular traffic flow, to prevent unauthorized parking and to reduce surface wear and tear of the roads. The scheme required all non-resident motorists to pay $1 if they wished to enter or park in the estate.

Following the passing of the resolution, the plaintiffs became concerned about the effect of the scheme on its business. Proposals were made by the plaintiffs to the first defendant, which involved the plaintiffs helping to regulate traffic flow in return for the scrapping of the scheme, and these were accepted. An agreement embodying the proposals ('the agreement') was then entered into between the first defendant and the plaintiffs. Later, the first defendant held an extraordinary meeting to implement the scheme. The chairman of the meeting ruled that the resolution to implement the scheme was a special one. A vote was taken but as more than 10% of the members voted against the resolution, it was declared lost. Following the expiry of the agreement, the management committee put the scheme into immediate effect. The plaintiffs started the action against the defendants for a declaration that the first defendant was acting outside its powers in imposing the scheme, or that the scheme amounted to a private nuisance, or that it was an unlawful interference with the plaintiffs' trade and the first defendant's action caused the HDB to breach its tenancy agreement with the plaintiffs. A declaration was also sought against the second to thirteenth defendants on similar grounds. The plaintiffs sought an injunction to restrain the defendants from interfering with any person entering the estate, and an order for the defendants to pay damages caused by the imposition of the scheme. On the same day that the writ of the plaintiffs was issued, they obtained an interim injunction against the defendants in the terms of the permanent injunction sought.